FILE COPY

Office Supreme Court, U.S.
FILED
DEC 21 1959
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 507

RICHARD A. MACK and THURMAN A. WHITSHIP,
Petitioners,

v.

UNITED STATES OF AMERICA, *Respondent.*

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

NICHOLAS J. CHASE,
A. KENNETH PYE,
1216 Wyatt Building,
Washington 5, D. C.,
Attorneys for Petitioner,
Richard A. Mack.

ARTHUR J. HOLLAND,
RICHARD H. HUNT,
FERDINAND J. MACK,
JAMES E. HOGAN,
110 Shoreham Building,
Washington 5, D. C.,
Attorneys for Petitioner,
Thurman A. Whitship.

Press of Byron S. Adams, Washington, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 507

RICHARD A. MACK and THURMAN A. WHITESIDE,
Petitioners,

v.

UNITED STATES OF AMERICA, *Respondent.*

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

Petitioners pray that this Court grant rehearing of its order of December 7, 1959, denying the Petition for Writ of Certiorari, and that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit in the above-entitled case as prayed for in the petition filed October 30, 1959, herein.

REASONS FOR GRANTING REHEARING AND ISSUING THE WRIT

The issue which petitioners request this Court to review is whether the denial of a motion for judgment of acquittal is appealable as a final decision where the evidence at the first trial was not sufficient to sustain a

guilty verdict, and the jury was discharged without reaching any verdict.

In their Petition for Writ of Certiorari, petitioners predicted at page 4 that "it will be only a matter of time until this same question is presented to the other courts of appeals, because this question of finality arises in virtually every criminal case eventuating in a hung jury." Two days after this Court denied the instant petition for certiorari, there was filed with the Court the case of *Shavin* v. *United States of America*, Dkt. No. 577. Petitioner in that case seeks a writ of certiorari to the United States Court of Appeals for the Seventh Circuit, and his petition presents to this Court the precise question involved in petitioners' case.

The question of whether the deadlocking of the jury deprives a defendant of the right to an immediate appeal from an erroneous denial of his motion for a judgment of acquittal based upon the insufficiency of the Government's evidence had never arisen in any appellate court prior to this year. However, in the course of this year, the question has arisen in three different courts of appeal, and in each case a petition for a writ of certiorari has been lodged with this Court. Therefore, it seems that this is a question of law which literally cries out for decision by the Supreme Court.

In view of the recently filed petition for writ of certiorari in the *Shavin* case, petitioners respectfully request that this Court reconsider and thereupon grant their petition, and that the *Shavin* case and the instant case be consolidated for argument and decision.

CONCLUSION

For the reasons set forth above and in the Petition for Writ of Certiorari, it is respectfully urged that rehearing be granted, and that, upon such rehearing, a writ of certiorari issue to the United States Court of Appeals for the District of Columbia Circuit.

Respectfully submitted,

NICHOLAS J. CHASE

A. KENNETH PYE
1216 Wyatt Building
Washington 5, D. C.
Attorneys for Petitioner
Richard A. Mack

ARTHUR J. HILLAND

RICHARD H. HUNT

FERDINAND J. MACK

JAMES E. HOGAN
410 Shoreham Building
Washington 5, D. C.
Attorneys for Petitioner
Thurman A. Whiteside

Certificate of Counsel

We hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 33 of the Rules of this Court.

NICHOLAS J. CHAS

A. KENNETH PYE

ARTHUR J. HILLAND

RICHARD H. HUNT

FERDINAND J. MACK

JAMES E. HOGAN